

The Honorable Tiffany M. Cartwright

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT TACOMA**

**OBRIA GROUP, INC. and MY CHOICES
d/b/a OBRIA MEDICAL CLINICS PNW,**

Plaintiffs.

V.

ROBERT FERGUSON, in his official capacity as Attorney General for the State of Washington,

Defendant:

NO. 3:23-cv-06093-TMC

DEFENDANT'S MOTION FOR
CONTINUANCE PURSUANT TO
FEDERAL RULE OF CIVIL
PROCEDURE 56(d) AND FOR
LEAVE TO TAKE LIMITED
DISCOVERY

NOTED FOR: SEPTEMBER 18,
2024

DEF.'S MOT. FOR CONTINUANCE
PURSUANT TO FED. R. CIV. P. 56(d)
AND FOR LEAVE TO TAKE LIMITED
DISC.
NO. 3:22-cv-06092-TMC

NO. 3:23-cv-06093-TMC

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I. INTRODUCTION

Pursuant to Federal Rule of Civil Procedure 56(d), the Attorney General respectfully requests a continuance of summary judgment briefing to give it an opportunity to take discovery on three core factual issues Plaintiffs (collectively, Obria) raise in their summary judgment motion. Obria's motion rests almost entirely on self-serving and hearsay testimony the Attorney General's Office (AGO) has never had an opportunity to test through discovery. As a result, the AGO finds itself in the impossible position of responding to Obria's motion for summary judgment without ever having had the opportunity to discover and test the core factual allegations that Obria rely on in their motion. In particular, Obria depend heavily on the sworn testimony of Janice "River" Sussman (who verified their Third Supplemental Complaint), a witness the AGO has not deposed. Obria's supporting declarations are likewise filled with hearsay, second-hand, and even third-hand accounts from witnesses who have not been identified, let alone deposed. The motion also relies on incomplete and redacted exhibits which the AGO has had no opportunity to scrutinize or question. Because of the significant informational asymmetries at this pre-discovery phase of the case, the AGO cannot fully or fairly respond to Obria's key factual premises. Accordingly, the AGO seeks a continuance to take limited discovery on three disputed topics necessary to respond to Obria's motion.

First, the AGO needs to take discovery on Obria's purported injury from a change in their insurance. Obria's declaration attempting to substantiate this claim is accompanied by highly redacted exhibits with missing attachments, and these documents raise more questions than they answer. Obria have previously rebuffed the AGO's efforts to obtain informal discovery on this issue, refusing to provide any materials until discovery. The AGO should be permitted to take discovery into that issue now. Second, the AGO needs discovery on Obria's self-serving claim that the AGO's investigation chilled their speech, particularly given the evidence the AGO submitted on this issue in support of their Rule 12(b)(1) motion. And third, the AGO needs discovery to interrogate Obria's conclusory and self-serving allegations of associational harm.

1 Obria assert the AGO's investigation has harmed their relationship with vendors, but this claim
 2 rests entirely on hearsay, which the AGO has had no opportunity to probe. Rule 56(d) motions
 3 are granted "almost as a matter of course" when discovery has not yet been completed.
 4 *Burlington N. Santa Fe R. R. Co. v. Assiniboine & Sioux Tribes of Fort Peck Rsr.,* 323 F.3d
 5 767, 773-74 (9th Cir. 2003). Here, *no* opportunity for discovery has occurred at all. Accordingly,
 6 this Court should grant the AGO's Rule 56(d) motion and continue the summary judgment
 7 briefing schedule in this case to allow the AGO to conduct limited discovery for its response.

8 II. BACKGROUND

9 More than two years ago, the AGO issued non-self-enforcing CIDs to Obria seeking
 10 information about potential CPA violations from the marketing of services to Washington
 11 consumers. Dkt. #43 (Third Compl.) ¶¶ 101-02. Obria voluntarily provided interrogatory
 12 responses and made several document productions, *id.* ¶¶ 109-10, 114-16, the last of which was
 13 in June 2023. After that time, the AGO made no further requests. *See generally id.*

14 Despite nearly six months of silence from the AGO and no indication that further
 15 information was needed, Obria filed this lawsuit seeking a preliminary injunction enjoining any
 16 future hypothetical enforcement of the May 2022 CIDs, a final injunction granting the same
 17 relief, and a declaration that the CIDs violate Obria's constitutional rights. Dkt. #1 ¶¶ A-C. The
 18 AGO moved to dismiss, and the parties completed briefing and oral argument in February 2024.

19 On March 22, 2024, with the parties' motions still pending, Obria filed a Notice of
 20 Supplemental Information, stating that "Obria PNW received notice that its insurance agency is
 21 presently unable to secure an underwriter to renew and extend an essential insurance policy"
 22 purportedly due to Obria's disclosure of the AGO's nearly two-year-old CIDs. *See* Dkt. #32 at
 23 1. On March 28, Obria moved for leave to file a supplemental complaint alleging that their
 24 insurance changes were "a direct result of Attorney General Ferguson's CIDs." Dkt. #33 at 2.
 25 To better understand Obria's new insurance-related allegations, the AGO requested more
 26 information. *See id.* But "Plaintiffs declined to provide those materials prior to discovery in this

1 action.” *Id.* at 4.

2 While the AGO’s opposition to supplementation was pending, Obria’s counsel moved a
 3 second time to supplement the Complaint with additional insurance allegations, specifically that
 4 “Obria PNW’s insurance agency ultimately obtained replacement coverage through a different
 5 underwriter, but, because of the pendency of Defendant’s CIDs, it was at a cost more than seven
 6 times higher than the premiums for the same insurance coverage prior to the commencement of
 7 Defendant’s investigation.” *See Dkt. #36-1.* In response to Obria’s purported dilemma, the AGO
 8 provided Obria with a letter advising that it had closed the investigation and the related CIDs
 9 even though it was not the AGO’s standard procedure. *Dkt. #38-1.*

10 On June 21, 2024, Obria filed their Third Supplemental Verified Complaint, adding the
 11 new insurance allegations and removing three claims. *Dkt. #43* (Third Compl.). The AGO, again,
 12 moved to dismiss. *Dkt. #44.* On August 26, 2024, Obria filed their response to the AGO’s motion
 13 to dismiss and a motion for summary judgment and permanent injunction. *Dkt. #46.*

14 Having reviewed Obria’s motion for summary judgment, the AGO now seeks leave of
 15 the Court to take limited discovery in order to respond to Obria’s motion. Pertinent here, the
 16 AGO has not yet answered the Complaint, the parties have not yet conferred pursuant to
 17 Rule 26(f), and the Court has not entered any deadlines for discovery. *See Fed. R. Civ. P.*
 18 26(d)(1) (generally prohibiting parties from “seek[ing] discovery from any source before the
 19 parties have conferred as required by Rule 26(f)”). And, as noted above, Obria previously
 20 rebuffed the AGO’s attempt to obtain informal discovery. *Dkt. #33* at 4. Further, the AGO
 21 previously advised the Court that it believed discovery might be necessary in order for it to
 22 respond to a pre-discovery motion for summary judgment. *Dkt. #41* at 3-4. In sum, having not
 23 yet had the opportunity to take *any* discovery from Obria, the AGO now seeks leave to take
 24 limited discovery into three issues before responding to Obria’s summary judgment motion.

III. LEGAL STANDARD

Rule 56(d) protects litigants from being “railroaded” by a “premature motion for summary judgment” when the “nonmoving party has not had an opportunity to make full discovery.” *See Celotex Corp. v. Catrett*, 477 U.S. 317, 326 (1986); *see also Volvo Constr. Equip. N. Am., LLC v. Clyde/W., Inc.*, No. C14-0534JLR, 2014 WL 5365454, at *2 (W.D. Wash. Oct. 20, 2014) (“Rule 56(d) ‘provides a device for litigants to avoid summary judgment’ without ‘sufficient time to develop affirmative evidence.’” (quotation omitted)). To move under Rule 56(d), an opposing party must show “‘by affidavit or declaration that, for specified reasons, it cannot present facts essential to justify its opposition,’ at which point the Court may defer or deny the motion for summary judgment, allow time for discovery, or take any other appropriate action.” *Gardner v. Clark*, No. C22-1589-RAJ, 2024 WL 278930, at *1 (W.D. Wash. Jan. 25, 2024) (quoting Rule 56(d)). To prevail, the opposing party “must make ‘(a) a timely application which (b) specifically identifies (c) relevant information, (d) where there is some basis for believing that the information sought actually exists.’” *Emps. Teamsters Loc. Nos. 175 & 505 Pension Tr. Fund v. Clorox Co.*, 353 F.3d 1125, 1129 (9th Cir. 2004) (quotation omitted). However, the “specificity requirement is premised on some discovery having taken place.” *Head v. Wilkie*, 784 F. App’x 503, 506 (9th Cir. 2019).

Rule 56(d) relief is generously granted where, as here, a summary judgment motion is filed “before a party has had any realistic opportunity to pursue discovery relating to [its] theory of the case.” *Id.* (quotation omitted); *see also Metabolife Int’l, Inc. v. Wornick*, 264 F.3d 832, 846 (9th Cir. 2001) (“Although Rule 56(f) facially gives judges the discretion to disallow discovery...the Supreme Court has restated the rule as requiring, rather than merely permitting, discovery ‘where the non-moving party has not had the opportunity to discover information that is essential to its opposition.’” (quotation omitted)). Indeed, unless the party requesting a continuance “has not diligently pursued discovery of the evidence,” their request

1 “should be granted almost as a matter of course.” *Ark L. Grp. v. Arch Ins. Co.*, No. C22-0504JLR,
 2 2023 WL 2138303, at *3 (W.D. Wash. Feb. 21, 2023) (quoting *Burlington*, 323 F.3d at 773-74).

3 **IV. ARGUMENT**

4 Pursuant to Rule 56(d), the AGO seeks a brief continuance of the summary judgment
 5 briefing schedule to allow the AGO to take limited discovery into three topics: (1) Obria PNW’s
 6 purported insurance-related harm; (2) Obria’s claims of chilled speech; and (3) Obria PNW’s
 7 claims of associational injury. Because the AGO is timely requesting specific relevant
 8 information that is essential to meaningfully respond to Obria’s motion for summary judgment
 9 and has a reasonable basis for believing such information exists, this Court should grant the
 10 AGO’s motion as a “matter of course.” *Burlington*, 323 F.3d at 773-74.

11 **A. The AGO’s Motion is Timely**

12 First, the AGO’s Rule 56(d) motion is timely. The AGO brings this motion just over one
 13 week after receiving Obria’s motion for summary judgment. *See, e.g., Ark Law Group*, 2023 WL
 14 2138303, at *4 (56(d) motion timely when filed one week after summary judgment motion);
 15 *Volvo Constr. Equip.*, 2014 WL 5365454, at *4 (same); *see also IVC Highlands TT, LLC v.*
 16 *DirectBuy, Inc.*, No. C16-0327RAJ, 2016 WL 3690127, at *2 (W.D. Wash. July 12, 2016) (56(d)
 17 motion timely when “filed within the time Defendant had to oppose the summary judgment
 18 motion”).

19 More importantly, the AGO’s motion is timely in the scope of this litigation because it
 20 is brought before *any* discovery has occurred in this case, and in fact before any discovery was
 21 even permitted by rule, much less the close of discovery. *See Ark Law Group*, 2023 WL 2138303,
 22 at *4 (56(d) motion timely when filed six months before discovery cutoff); *Atigeo LLC v.*
 23 *Offshore Ltd. D*, No. C13-1694JLR, 2014 WL 1494062, at *3 (W.D. Wash. Apr. 16, 2014)
 24 (timely when filed seven months before discovery cutoff); *Volvo Cons. Equip.*, 2014 WL
 25 5365454, at *4 (timely when brought months before discovery cutoff).

1 In fact, “[s]ummary judgment is generally premature before the entry of a scheduling
 2 order.” *Ejonga v. Strange*, No. 2:21-cv-01004-RJB-JRC, 2021 WL 6274743, at *1 (W.D. Wash.
 3 Nov. 24, 2021), *report and recommendation adopted*, No. 21-1004 RJB-JRC, 2022 WL 37649
 4 (W.D. Wash. Jan. 4, 2022) (citation omitted); *see also Head*, 784 F. App’x at 506 (summary
 5 judgment premature without discovery where “district court ordered briefing on summary
 6 judgment immediately upon denying the third motion to dismiss” and before “initial disclosures
 7 or...a Rule 26(f) conference”); *Jones v. Blanas*, 393 F.3d 918, 930 (9th Cir. 2004) (“[S]ummary
 8 judgment is disfavored where relevant evidence remains to be discovered”). This is for good
 9 reason—“lightning-quick summary judgment motions can impede informed resolution of fact-
 10 specific disputes.” *Burlington*, 323 F.3d at 774; *see also Associated Indus. Ins. Co., Inc. v. Cole*
 11 *Wathen Leid Hall, P.C.*, 2020 WL 3605589, *2 (W.D. Wash. July 2, 2020) (“Ninth Circuit
 12 precedent counsels against granting such motions if the party opposing summary judgment has
 13 not had an opportunity to pursue discovery”); *Ozone Int’l, LLC v. Wheatsheaf Grp. Ltd.*, 2020
 14 WL 2199505, *2-3 (W.D. Wash. May 6, 2020) (denying motion for summary judgment filed
 15 before “opportunity to obtain *any* discovery” even where dispute of material fact was not readily
 16 apparent; noting although the motion was “technically permissible under the federal rules,”
 17 Ninth Circuit precedent counsels against granting such pre-discovery motions).

18 Here, it is undisputed that the AGO has had no opportunity to take discovery regarding
 19 Obria’s factual allegations, depose their sole declarant and complaint-verifier, or obtain relevant
 20 documents and information from them or third parties. *See Fed. R. Civ. P. 26(f)(1)*. Thus, the
 21 AGO’s request to do so now, just one week after Obria filed their motion for summary judgment,
 22 is timely.

23 **B. The AGO Identifies Specific and Relevant Information Essential to its Opposition**

24 In addition to timeliness, a motion under Rule 56(d) must specifically identify relevant
 25 information, though the “specificity requirement is premised on some discovery having taken
 26 place.” *Wilkie*, 784 F. App’x at 506; *see also Burlington*, 323 F.3d at 774 (where “no discovery

1 whatsoever has taken place, the [non-moving party]...cannot be expected to frame its motion
 2 with great specificity as to the kind of discovery likely to turn up useful information"). The AGO
 3 nevertheless identifies three specific and relevant categories of information it seeks to discover:
 4 (1) Obria PNW's purported insurance-related harm; (2) Obria's claims of chilled speech; and
 5 (3) Obria PNW's claims of associational injury with their web-based vendors. Information on
 6 each of these issues is essential for the AGO to meaningfully respond to Obria's motion for
 7 summary judgment.

8 **1. Insurance**

9 First, the AGO seeks to discover information about Obria's purported insurance harm.
 10 Obria include facts and exhibits in Janice "River" Sussman's Second Declaration (Second
 11 Sussman Decl.), but this declaration is flawed for several reasons: it contains unsupported
 12 hearsay, it redacts important and essential information from the limited included exhibits, and
 13 the handpicked exhibits included are incomplete. *See* Fraas Decl. in Support of Rule 56(d) Mot.
 14 (Third Fraas Decl.) ¶ 11 (identifying deficiencies in Sussman's Declaration). Accordingly, the
 15 AGO seeks to conduct discovery into, among other things, the contract language of Obria PNW's
 16 prior and current insurance policies; information into what steps, if any, Obria PNW took to alert
 17 its prior insurer of the AGO's CIDs at the time it received them in 2022; unredacted and full
 18 communications between Obria PNW and its insurance broker regarding its March 2024
 19 insurance renewal; unredacted and full communications between Obria PNW's insurance broker
 20 and the various insurers it communicated with regarding Obria PNW's insurance quotes;
 21 discovery into what impact, if any, Obria PNW's decision to file its own litigation had on its
 22 insurance rate; and discovery into what impact, if any, the CIDs had on Obria's insurance rates.

23 *Id.* ¶ 12.

24 This information is essential to the AGO's opposition because it is directly relevant to
 25 refuting Obria's standing argument. *See* Dkt. #46 at 17 (relying on Obria PNW's insurance
 26 increase to demonstrate injury-in-fact). To be clear, the AGO maintains its position that Obria

1 have not demonstrated standing as a matter of law, but at the summary judgment stage, a
 2 complete factual record is imperative (and this evidence can also be considered by the Court for
 3 purposes of resolving the AGO's pending 12(b)(1) motion). These facts are also relevant to the
 4 AGO's argument that a permanent injunction in this case would not redress Obria PNW's alleged
 5 insurance injury. *See* Dkt. #44 at 17-18. Finally, this information is relevant to the AGO's
 6 argument that its investigation did not cause Obria PNW's insurance increase—especially if
 7 Obria PNW was required to timely notify its insurer of a pending CID, and did not do so. *See id.*
 8 at 14-17. Simply put, to meaningfully respond to Obria's factual allegations on this issue, the
 9 AGO must have more information regarding why Obria's insurer declined their coverage and
 10 the AGO should not be required to rely on Ms. Sussman's declaration based on hearsay and her
 11 redacted and incomplete exhibits. Thus, this Court should give the AGO the opportunity to
 12 discover crucial factual information related to Obria's alleged insurance-related harm before
 13 responding to Obria's motion for summary judgment.

14 **2. Chilled speech**

15 Second, the AGO seeks leave to discover specific and relevant information to respond to
 16 Obria's allegations of chilled speech. Third Fraas Decl. ¶¶ 13-15. Relying only on their verified
 17 complaint, Obria contend in their motion for summary judgment that “[t]he record shows the
 18 CID ‘actually chilled’ the Obria Clinics’ speech.” Dkt. #46 at 28. To support this “actual chill”
 19 assertion, Obria identify three things: (i) Obria PNW’s decision to stop hosting its own website
 20 and move to the Obria national website; (ii) Obria PNW’s decision to purportedly not make
 21 public statements on APR; and (iii) Obria’s decision to not publish a brochure on APR.
 22 Discovery on these issues is essential for the AGO to meaningfully respond to Obria’s self-
 23 serving assertions of First Amendment chill and associational harm. *Id.*

24 **a. Website**

25 Obria PNW claims that “in an effort to limit [its] potential exposure to reprisal from [the
 26 Attorney General] for advertising [its] services, including APR, Obria PNW has discontinued

1 operating its own website’ and ‘instead relies upon the Obria Group to host a website listing its
 2 services.” Dkt. #46 at 28, 29 (relying on Third Compl. ¶¶ 121-22). The AGO has never had the
 3 opportunity to seek information related to this factual assertion. This matters because the AGO
 4 presented evidence from Obria’s own website indicating that having affiliates (like Obria PNW)
 5 use the national Obria website was part of a coordinated “digital outreach strategy.” This raises
 6 a factual issue as to whether Obria PNW’s website was changed in response to the AGO’s
 7 investigation or as a strategic business decision. Dkt. #45-5 at 3; *see also* Third Fraas Decl. ¶ 14.
 8 The AGO is entitled, therefore, to seek discovery on this issue.

9 Obria’s website also relates to Obria PNW’s claim of associational harm because Obria
 10 claim that “[a]s a result of outsourcing their website needs to the Obria Group, Obria PNW has
 11 reduced or eliminated its contracts with vendors who provide their website hosting, search
 12 engine optimization, and other marketing-related services.” Third Compl. ¶ 123. Thus, discovery
 13 into why Obria PNW decided to move to the Obria national website and whether and how Obria
 14 PNW is part of Obria’s “digital outreach strategy” may enable the AGO to establish that Obria
 15 PNW chose to change its relationship with its web-related vendors for business reasons, not
 16 because of associational harm.

17 **b. Public statements**

18 Similarly, the AGO needs discovery regarding Obria PNW’s statement that “as a direct
 19 result of AG Ferguson’s investigation, Obria PNW ‘has not made any further public statements
 20 about APR due to fear of reprisal’ from the Attorney General” and that it “stopped making certain
 21 speech and declined to speak more because of the Attorney General’s investigation.” Dkt. #46
 22 at 28-29; *see also* Third Fraas Decl. ¶ 15. The AGO should be given the opportunity to seek
 23 discovery on this issue, especially since the AGO presented evidence that Obria Group—who
 24 also received a CID—has continued to speak publicly about APR on its website, and that Obria
 25 PNW decided to affiliate with this website. *See* Dkt. #45-4. While Obria contend in their motion
 26 for summary judgment that “the statements Obria PNW is making now via the national website

1 are not the same statements that it made before (and now abandoned) on its own website,” Dkt.
 2 #46 at 29 (citing Third Compl. ¶¶ 118-22), the evidence cited by Obria PNW contains no
 3 information on this issue. The AGO needs to be able to gather this evidence to meaningfully
 4 respond to Obria PNW’s “sworn averments” of chilled speech. Dkt. #46 at 29.

5 **c. Brochure**

6 The AGO also needs discovery on Obria’s claim that “[w]ere it not for that [AGO]
 7 investigation, the Obria Clinics would have ‘prepare[d] a brochure of materials on the safety and
 8 efficacy of APR to be distributed on social media, at its clinics, and elsewhere.’” Dkt. #46 at 28
 9 (quoting Third Compl. ¶ 120); *see also* Third Fraas Decl. ¶ 16. As discussed above, the AGO
 10 has produced evidence that Obria Group continues to speak publicly about APR on the national
 11 Obria website, which Obria PNW is affiliated with. Dkt. #45-4. The AGO should be permitted
 12 to take discovery into why Obria feels comfortable providing information on the safety and
 13 efficacy of APR on its website but feels “chilled” from preparing a brochure on the same exact
 14 topic. *See* Dkt. #45-4 (making safety and efficacy claims on APR on national Obria website).
 15 The AGO should also be permitted to take discovery into this alleged social media campaign
 16 and when the decision was purportedly made to abandon it. Without discovery on these essential
 17 issues, the AGO cannot meaningfully respond to Obria’s self-serving claims of chill.

18 **3. Associational harm**

19 Finally, the AGO seeks specific and relevant information on Obria’s unsupported
 20 allegations of associational harm. Obria allege that “the Attorney General’s investigation
 21 damaged relationships with vendors who are mission-aligned with the Obria Clinics.” Dkt. #46
 22 at 34. But this allegation rests solely on hearsay. *See* Third Fraas Decl. ¶ 17. The AGO seeks to
 23 discover facts regarding this allegation, including discovery into communications between Obria
 24 PNW and its vendors. *Id.* These specific facts are relevant to refuting Obria’s claim that their
 25 freedom of association was violated. Indeed, as Obria rely on purported statements from their
 26 vendors in support of their motion for summary judgment, *see* Dkt. 46 at 15, 27, 34 (relying on

1 First Sussman Decl. ¶¶ 2-5), the AGO should be permitted to explore the veracity of those
 2 statements.

3 * * *

4 In sum, the AGO has identified specific, relevant facts for which discovery is essential
 5 to the AGO's ability to respond to Obria's motion for summary judgment. Without an
 6 opportunity to take such discovery, the AGO is forced to accept the entirety of Obria's verified
 7 complaint at face value without any opportunity to interrogate and address its glaring omissions
 8 and inconsistencies. This Court should give the AGO time to depose Ms. Sussman on the verified
 9 complaint and allow the AGO to gather other information, testimony, and documents in support
 10 of its defenses on the above issues before responding to Obria's motion for summary judgment.
 11 See *Celotex*, 477 U.S. at 327 ("Rule 56 must be construed with due regard...for the rights of
 12 persons opposing such claims and defenses to demonstrate...[there is] no factual basis.")

13 **C. The AGO Has Good Reason to Believe the Information It Seeks Exists**

14 The AGO also has good reason to believe that the facts it seeks to obtain exist. Given
 15 that Ms. Sussman verified the Third Complaint and submitted two declarations in this case
 16 (attaching redacted and incomplete communications), she is undoubtedly in possession of
 17 documents, communications, and information relevant to the limited discovery the AGO seeks
 18 to obtain on the topics identified above. The AGO should be able to obtain discovery related to
 19 those topics and depose Ms. Sussman on the factual allegations she verified. The AGO has also
 20 submitted evidence from the publicly-available national website of Obria Group reflecting its
 21 continued speech on APR (Dkt. #45-4) as well as its "Digital Outreach Strategy" for its affiliates
 22 (Dkt. #45-5), giving the AGO a good faith belief that Obria Group will have relevant documents,
 23 communications, and information on these issues, as well as communications with Obria PNW
 24 related to its decision to affiliate with the national website and their purported desire to
 25 collectively develop an APR brochure. The AGO should be able to obtain responsive documents
 26 and communications on these issues and take a 30(b)(6) deposition of Obria Group on these

1 topics. Finally, based on the declarations of Ms. Sussman, both of which rely on hearsay, the
 2 AGO has good reason to believe that other third parties will have relevant information on the
 3 topics identified above, including Obria's web-related vendors and insurance broker. The AGO
 4 should be able to obtain these communications and, if necessary, take relevant depositions.

5 **D. The AGO Has Not Yet Had an Opportunity to Conduct Discovery**

6 The Ninth Circuit has advised that if a party makes the requisite showing under 56(d), a
 7 continuance "should be granted almost as a matter of course unless the non-moving party has
 8 not diligently pursued discovery." *Burlington*, 323 F.3d at 773-74. The AGO has not had the
 9 opportunity to engage in *any* discovery as there has not yet been a Rule 26(f) conference. Nor
 10 was the AGO able to obtain informal discovery on Obria PNW's insurance-related allegations,
 11 as Obria "declined to provide those materials prior to discovery in this action." Dkt. #33 at 4.
 12 Thus, this Court should grant a continuance "as a matter of course" to allow the AGO to conduct
 13 the limited discovery requested here in. *Burlington*, 323 F.3d at 773-74.

14 **E. The AGO Seeks Leave to Complete Briefing on its Pending Motion to Dismiss**

15 Given the AGO's need to take discovery to respond to Obria's motion for summary
 16 judgment, and in light of the court's previous order entering a combined briefing schedule (Dkt.
 17 #42), the AGO respectfully requests that it be permitted to file a standalone reply in support of
 18 its motion to dismiss while Rule 56(d) discovery proceeds. Therefore, in addition to a
 19 continuance of the summary judgment briefing schedule, *see id.*, the AGO requests three weeks
 20 from the date of the Court's Order on this Rule 56(d) motion to file a reply brief in support of its
 21 motion to dismiss.

22 **V. CONCLUSION**

23 The AGO meets all of the required factors under Rule 56(d) to justify a continuance and
 24 opportunity to take discovery. Accordingly, the Court should continue the summary judgment
 25 briefing schedule in this case to allow the AGO to pursue limited discovery into the issues
 26 identified above before filing its response brief.

1 DATED this 4th day of September 2024.

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18 I certify that this memorandum contains 4,175
19 words, in compliance with LCR 7(e)(2).

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